THE PLEADER'S GUIDE,

A DIDACTIC POEM,

IN TWO BOOKS,

CONTAINING

THE CONDUCT OF A SUIT AT LAW,

With the Arguments of

COUNSELLOR BOTHER'UM,

AND

COUNSELLOR BORE'UM,

IN AN ACTION BETWIXT

JOHN-a-GULL, AND JOHN-a-GUDGEON,

FOR ASSAULT AND BATTERY, AT A LATE

Contested Election.

BY THE LATE

JOHN SURREBUTTER, ESQ.

SPECIAL PLEADER, AND BARRISTER AT LAW.

DUBLIN:

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ADVERTISEMENT.

IF this first Book of Mr. SURREBUTTER'S *Lectures should meet with a favourable Reception from the* respectable *and* liberal *Professors of the Law, the second Book will in due Time be submitted to their Perusal, in which will be contained the further Conduct of a Suit at Law, with the Arguments of* COUNSELLOR BOTHER'UM *and* COUNSELLOR BORE'UM, *in an Action between* John-a-Gull, *and* John-a-Gudgeon, *for Assault and Battery, &c.*

TO THE READER.

THE following production of the late ingenious MR. SURREBUTTER, Special Pleader, and Barrifter at Law, is fubmitted to your perufal in the precife form in which it was found among the Author's Papers at his deceafe. The Poem is divided into two Books, each of which is fubdivided into eight Parts, being the fubftance of a Courfe of Lectures originally intended for the ufe of his kinfman, MR. JOB SURREBUTTER, to whom they are particularly addreffed. An Explanation of the technical terms, and legal references, as they occur in the courfe of the work, are fubjoined by your humble fervant,

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THE EDITOR.

SYLLABUS

OF

MR. SURREBUTTER's PROFESSIONAL LECTURES.

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THE

PLEADER's GUIDE.

BOOK I.

LECTURE I.

MR. SURREBUTTER *propoſes the plan of his lectures: his addreſs to the Gentlemen of the Law, particularly to his kinſman,* MR. JOB SURREBUTTER—*The plan of Mr.* JOB's *education for the ſtudy of the Law commended—The advantages of his ſituation as a Special Pleader's Pupil.*

OF legal Fictions, Quirks, and Gloſſes,
Attorney's gains, and Client's loſſes,
Of Suits created, loſt, and won,
How to undo, and be undone,

Whether

Whether by COMMON LAW, or CIVIL
A man goes ſooner to the Devil,
Things which few mortals can diſcloſe
In Verſe, or comprehend in Proſe,
I ſing—do thou, bright Phœbus, deign
To ſhine for once in Chanc'ry-lane;
And, CLIO, if your pipe you'll lend
To MERCURY, the Lawyer's friend,
That * Uſher of the golden Rod,
Of Gain and Eloquence the God,
Shall lead my ſteps with guidance ſure,
Safe through the † palpable obſcure,
And take my Parchments for his labour
To cover your harmonious Tabor—
"PINDUS *to wit*,"—or where you chuſe,—
At Lincoln's Inn, or Arethuſe,
For Bards and Lawyers both with eaſe
May place the ‡ *Venue* where they pleaſe;

* ——————— Virgâque levem coerces
Aureâ turbam. HOR. Od.

† And through the palpable obſcure find out
His uncouth way. MILTON, b. ii. v. 406.

‡ *Venue* or *viſne*, in Latin, *vicinetum*, is the neighbourhood in which the Declaration ſtates the Cauſe of Action to have ariſen, and is prefixed to the margin of every Declaration with a *Scilicet*, as "Pindus to wit" above.

No

* No matter where an Action's laid,
A Contract or a Poem made:
Is there a proud o'erbearing wight
Who tramples on his neighbour's right,
Superior in his own Opinion
To Lawyers, and the Law's Dominion?
Say what compulsive mode of action
Must give the injured satisfaction;
What forms, what fictions must combine
To make the parties † Issue join
And better may enable those
Who draw their Pleas, or Briefs compose,
To hold the balance of success
With such precision and address,
That both the combat may sustain,
And neither the advantage gain,
But when 'tis o'er and judgment given
The scales may prove so just and even,

* *No matter where*—This must be understood of personal or transitory actions which relate to Goods and Chattels, as contradistinguished from local, which relate to Lands and Tenements: of the former class are all Actions of Covenant, Contract, Annuity, or Debt at large. For *debitum et contractus sunt nullius loci.* 7 *Co.* 3. *a.* 2 *In.* 229. 23.

† *Issue join*—Issue from the French *issuer*, i. e. *emanare*, to flow from. The word *issue* has various significations in Law, it occurs here in its most general and received sense "a single "certain and material point issuing out of the Allegations and "Pleas of the Plaintiff and Defendant, consisting regularly "upon an Affirmative and Negative in a Cause to be tried "by a Jury of twelve men." 1 *Inst.* 126.

That

That each may venture to make oath
The Law's impartial to them both,
When both in rags their folly rue,
The Victor, and the Vanquish'd too.

Hear then, and deign to be my Readers,
Attorneys, Barristers, and Pleaders,
Shrieves, Justices, and Civil Doctors,
Surrogates, Delegates, and Proctors,
Grave Judges too, with smiles peruse
The sallies of a Lawyer's Muse,
A buxom Lass, who fain would make
Your sober sides with Laughter shake;
And, good my Lords, be kind and gracious,
And though You deem her contumacious,
Ne'er to the Fleet, or Bridewell send her,
But spare a ludicrous offender,
Who longs to make your muscles play,
And give your Cheeks a holiday.

Hear me, ye Wits, and Critics too,
And learned * Dames in *Stockings blue*,
And you, ye Bards, my book who dip in,
In hopes to catch its Author tripping,
Some Mercy still and Justice shew him,
And purchase ere you damn his Poem.

But, chiefly thou, dear Job, my Friend,
My Kinsman, to my Verse attend;

* Κέκλυθί μευ Τρῶες καὶ ἰυκνήμιδες Ἀχαιοί, Hom.

By

By Education form'd to ſhine
Conſpicuous in the Pleading Line,
For you, from five years old to twenty,
Were cramm'd with Latin words in plenty,
Were bound apprentice to the Muſes,
And forc'd with hard words, blows, and bruiſes,
To labour on Poetic ground,
Dactyls and Spondees to confound,
And when become in Fictions wiſe,
In Pagan hiſtories and lies,
Were ſent to dive at Granta's cells,
For Truth in Dialectic wells,
There duly bound for four years more
To ply the Philoſophic oar,
Points metaphyſical to moot,
Chop Logic, wrangle, and diſpute;
And now by far the moſt ambitious
Of all the ſons of Burgerſdicius,
Preſent the Law with all the knowledge
You gather'd both at School and College,
Still bent on adding to your ſtore
The Graces of a Pleader's lore;
And, better to improve your taſte,
Are by your Parent's fondneſs plac'd
Among the bleſt, the choſen few,
(Bleſt, * if their happineſs they knew,)

* Sua ſi bona no'rint. VIRG.

Who for three hundred Guineas paid
To ſome great Maſter of the Trade,
Have, at his rooms, by *ſpecial* Favour,
His leave to uſe their beſt endeavour
By drawing Pleas, from nine till four,
To earn him twice three hundred more,
And, after dinner, may repair
To '*foreſaid* rooms, and *then* and *there*
Have '*foreſaid* leave, from five till ten,
To draw th' *aforeſaid* Pleas again;
While thus your bliſsful hours run on
Till three improving years are gone,
Permit me with theſe rhymes, awhile,
Your leiſure moments to beguile,
And guide your bold advent'rous ways
Safe through that wide and pathleſs maze
Where Law and Cuſtom, Truth and Fiction,
Craft, Juſtice, Strife, and Contradiction,
With every bleſſing of Confuſion,
Quirk, Error, Quibble, and Deluſion,
Are all, if rightly underſtood,
Conſpiring for the public Good,
Like jarring Miniſters of State,
'Mid Anger, Jealouſy, and Hate,
In friendly COALITION join'd,
To harmonize and bleſs mankind.

LECTURE II.

LECTURE II.

Of the KING, *and his Prerogative—Of the* CIVIL *and* MUNICIPAL *administration of Public Justice, allegorically delineated and compared.*

THE * KING, o'er ev'ry Cause supreme,
Be first the Prelude of my Theme,
In HIM, sans † *Laches* or ‡ *Misfeasance*,
Resides ideal § *Omnipresence*;
HIM the just rights of Empire give
For ever in his Courts to live;

* Ex Διὸς ἀρχώμεσθα. THEOC.

† *Laches*, in French, *Lachès*, signifies slackness or negligence upon the presumption that the King is daily employed in the weighty affairs of Government, it is an established rule at *Common* Law, that no *Laches* shall be imputed to HIM, nor He any way suffer in his Interests, which are certain and permanent, *Bac.*

‡ *Misfeasance* signifies wrong doing; Lord C. J. *Hale* says, the Law presumes the King will do no wrong, neither indeed can He do any wrong.

§ *Omnipresence*, or Ubiquity, is a consequence of the KING's prerogative—his Majesty, in the eye of the Law is always present in all his Courts, although he cannot personally distribute Justice.

No wasteful lapse of rolling years
His just * Prerogative impairs;
E'en † Time that's wont so swift to fly,
Stands motionless with Majesty;
How long soe'er a Cause is stay'd
By ‡ Orders, Rules, and Motions made
On Points by learned Counsel mooted,
The KING can never be ‖ nonsuited.

* *Prerogative.* Lord *Coke* says, is so called, because "though "an Act has passed both houses of Parliament, yet before it will "be a Law the Royal Assent must be *asked* or *demanded*, and *ob-* "*tained*" (as indeed the etymology seems to import) "but that "it legally extends to all powers, privileges, and pre-eminences, "which the Law giveth to the Crown." *Co. L.* 90.—But the most precise definition of *Prerogative*, is in *Finch, L.* 85. Prerogative, he says, is that Law in the case of the King, which is not Law in the case of a subject.

† *Time.*—*Vigilantibus et non dormientibus jura subserviunt* is the Law in the case of the subject—*nullum Tempus occurrit regi* is the King's Plea. *Hob.* 347. The right of the King was never defeated by any length of Time till the 21 *Jac.* 1. *c.* 2. and act 9 *Geo.* 3. *c.* 15. which was framed to amend the former and render it more effectual. The King's Liberties and Franchises are expresly excepted from the operation of these acts.

‡ *Orders.*—Orders and Rules are obtained by Motion in Court, which is an occasional application to the Court by the parties, or their counsel, to obtain some Rule or Order which becomes necessary in the progress of the Cause, and is usually grounded on an *Affidavit*.

‖ *Nonsuited.*—A *Nonsuit* is a dereliction or renunciation of the suit, by the Plaintiff, before Verdict given, and is thus effected. The Plaintiff, or his agent, when he is apprehensive of a Verdict against him, withdraws himself out of Court, whereupon the Crier is ordered to call the Plaintiff, and if he or his agent does not appear, he is nonsuited. and is said *non sequi clamorem suum*—as the King cannot withdraw himself out of the Court, he cannot be nonsuited. "The King's Majesty cannot be nonsuit, be- "cause in judgment of Law he is ever present in all his Courts." *Co. L.* 139.

From

From HIM who feels his ſubjects woes,
The healing ſtream of * Juſtice flows;
From HIM, derives its genuine ſource,
Howe'er polluted in its courſe,
Howe'er unpalatable made,
Defil'd, perverted, or delay'd;
Bleſt Fount! from you th' oppreſs'd and weak
Eaſe to their cares and ſorrows ſeek;
Where'er thy genial waters ſtray,
Pride, Rapine, Fraud, and lawleſs Sway,
Forbear the hallow'd ground to tread,
While Truth by injur'd Virtue led
With weeping Innocence attends,
And proſtrate o'er thy current bends,
To quaff the cup which bounteous Heaven
To all impartially has given;
But ſome amidſt the legal Throng
Who think to them thy Streams belong,
Like thoſe of Galen's learned Tribe
Who ſome ſalubrious ſtream preſcribe,
But Chemicals and Drugs infuſe,
And all its healing powers abuſe,
Pain to their tortur'd Clients bring,
And make thy pure and wholeſome Spring
Foul as the pools which devils mix
At Chelt'nham, Harrogate, or Styx;

* *Juſtice*—The King is the Fountain of Juſtice, and all Courts derive their authority from him. *Co. L.* 139.

And

And Law itself so rich is grown
In terms and *nostrums* of its own,
That e'en the Sages who expound,
Its truths and mysteries profound,
(And none more learn'd, humane, and just
Have e'er discharg'd their sacred trust)
Are forc'd to cite opinions wise,
* *Crok. Car. Crok. Jac. and Crok. Eliz.*
And when some *recipe* they hit on
In † Glanville, Bracton, Coke, or Britton,
Their friendly succour interpose,
And hold the Patient by the nose.
With care administer the potion,
Consult, and give him ease by *Motion*,
And turn by tedious process quaint,
Acute to Chronical complaint.
Nor are there wanting who convey
Their *Nostrums* in a Civil way,

* *Crok. Car.*—Judge Croke's Reports are cited in the names of those princes in whose reigns the cases reported in his three volumes were determined, viz. Queen Elizabeth, King James, and King Charles I.

† *Glanville, Bracton, &c.*—*Glanville* was Chief Justice in the reign of Hen. II. and wrote a book of Common Law, supposed to be the most ancient on the subject.

Bracton wrote his Treatise in the reign of Henry III.

Sir *Ed. Coke* published his Institute and Commentary upon *Littleton* in the reign of James I.

Britton wrote his book in Edw. I.'s time by command of that king upon the model of *Justinian*'s Institutions. *Stamford's Prerog.* 621.

Doctors,

Doctors, who fond of consultations,
Their Patients work with long quotations,
And as the nature of the fact is,
Torment them with a foreign practice;
Pleas'd in mysterious Terms to speak,
And cite some fav'rite *Empirique*,
Some Quack, of note in days of yore,
When Science from the Latian shore
To Albion came, and * Tibur's streams
First join'd his social waves with Thames,
'Twas then that fam'd Academician,
That learned Monk and Politician,
He who VACARIUS was call'd,
The wise *eleve* of † THEOBALD,
And others by their Priests escorted,
Those Books ‡ of choice receipts imported,

* In Tiberim defluxit Orontes. JUVENAL.

† *Theobald.*—Theobald, a Norman abbot, and archbishop of Canterbury, in the reign of King Stephen, introduced the Civil Law into England. Among others of his retinue he brought over with him *Roger*, furnamed *Vacarius*, whom he placed in the university of Oxford to teach it to the people of this country. *Blac. Com.*

‡ *Those books*—A Copy of the Pandects was discovered at *Amalfi* or *Amalfis*, a city of Apulia, in the following manner: Lotharius II. in the year 1137, being engaged in a war in behalf of Pope Innocent II. against Roger, King of Sicily and Naples, carried the city of Amalfi by storm, with 46 Pisan gallies: upon plundering the city a copy of Justinian's Pandects was found, and from thence conveyed to Pisa, and afterwards to Florence, where it was kept in the duke's palace, according to Selden, and is never brought forth but with torch-light and tokens of reverence.

Which

Which at *Amalfi* lay conceal'd
Till by LOTHARIO's arms reveal'd,
With these, their Fortunes to prefer,
They set up Shop at Westminster;
* But of their practice were debarr'd
And fairly kick'd from Palace Yard,
Till thinking they had no intent
To hurt th' establish'd Government,
O'er-rule the Laws and ride the Land
With Romish edicts contraband,
The Nation, proud of the submission
Of men of birth and erudition,

* *But of their practice*—The extraordinary rise and establishment of the Civil Law created a jealousy throughout all Europe. King Stephen issued a peremptory command preventing its propagation in England, and probibiting Vacarius from reading Lectures at Oxford, and making it unlawful for any one to keep any of the books of the Roman Law by them. *Differt. ad Flet. c. 7.*

" The nobility at all times rejected the Civil Law with a de-
" gree of asperity and ill humour—The Usurper Stephen whose
" interest it was to conciliate their affections, went so far as to
" prohibit the study of it." *De Lolme.*

Charles the Ninth and Henry the Third of France issued edicts to the same effect in France. In Spain it was made capital to offer or allege the Roman Law as compulsive and binding, vid. *Bodin de Repub. Lib.* 1. *cap.* 8. of the impolicy of advancing the Laws of Strangers in derogation of the Municipal Laws of the country.

Fortescue, C. Justice of the King's Bench, and afterwards Chancellor, carried his opposition to the Civil Law so far, that he wrote a book intitled " *De Laudibus Legum Angliæ*," professedly with a view to demonstrate the superiority of the English Laws over the Civil.

Gave

Gave them a lodging, and in pity
Sent them to settle in the City,
Begg'd them to gather up their alls,
And vend their drugs behind St. Paul's—

Provided always that if e'er
Said Quack, or Quacks, should interfere,
Or any Quack, in word or deed
Presume his Province to exceed,
Or take upon him as a Scholar,
* PROHIBITORY WRIT should follow:
Blest Writ! by which their fees we stay'd,
And briefs into our bags convey'd!
A practice which must needs disgust 'em,
For as we thrive, they lose their custom;
But what they lose, or what they gain,
Has never yet disturb'd my brain.

* *Prohibitory Writ*—Or Writ of Prohibition, is a Prerogative Writ issuing out of the King's Bench, and in some cases, out of the Common Pleas, and the Chancery, and is directed to any inferior Court, enjoining their proceedings in a Cause therein depending, upon a Suggestion that the cognizancy thereof belongeth not to the Court. *F. N. B.* 39.

This Writ is commonly granted upon motion, grounded on a Suggestion on Record, stating the nature of the complaint, and issues to enjoin the Counsel, Judge, and Register of the inferior Court not to proceed any further in the Cause in question; but in cases of doubt or difficulty, the Party applying is directed by the Court to sue out a Prohibition, that is, to commence an Action by filing a Declaration, stating *a fiction in Law*, viz. that the other party has actually proceeded in the Suit *below*, notwithstanding the writ. And the Question as to the competency of the Inferior Court being negatived upon Demurrer and Argument, the Prohibition to the inferior Court results as a consequence of the Judgment.

Let

Let others heed ſuch broils and buſtles
Who better can command their muſcles;
Enough for me, when Client ſtands
With Purſe and Parchment in his hands,
And claims my favour and protection,
To keep my Features in ſubjection;
Enough for me, with ſerious face
To puzzle and perplex his Caſe,
Then give his Purſe a gentle ſqueeze,
And taſte the flavour of his Fees,
His ſweet Retainers, and Refreſhers,
And leave theſe claſſical Profeſſors
Mid barren fields of Roman lore
Their dreary journey to explore,
And lead through paths of fruitleſs ſcience
Their comfortleſs bewilder'd Clients.

LECTURE III.

LECTURE III.

Comparison continued—Of the CIVIL LAW *process—Excommunication—Serious Address to the Civilians, with certain weighty Interrogatories—*Mr. SURREBUTTER'S *personal Superiority as a Common Lawyer—*COUNSELLOR BOTHER'UM *and* COUNSELLOR BORE'UM *proposed to* Mr. JOB SURREBUTTER *as Models for his Imitation.*

KNOW all to whom these presents come,
The * Pandects of Imperial Rome,
And every † Rescript and Opinion
Of ‡ THEODOSIUS, or § JUSTINIAN,
|| Of ULPIAN, PAULUS, or PAPINIAN,
With

* *Pandects*—The Pandects, or Digests, are the Writings of the ancient Civil Lawyers, systematically compiled by Justinian, and comprised in fifty books. Vid. *not. ante.*

† *Rescript*—The Rescripts of the Roman emperors were the Expositions and Constructions which they were pleased to make of their own Laws by way of answer and opinion of the Cases referred to them.

‡ THEODOSIUS—A Code of CIVIL LAW was composed by order of the Emperor Theodosius the younger, and is still extant in sixteen books, containing a collection of the Imperial Constitutions, from Constantine, to his own Time. It received the Imperial sanction in the year 438. A. C.

§ JUSTINIAN—Justinian published his Code about a century afterwards in the year 530, and has preserved the Rescripts of the preceding Emperors.

|| ULPIAN, PAULUS, &c.—The greatest part of this island was governed wholly by the Civil Law for about 300 years from

With Him who ſtudied and profeſs'd 'em,
And had the Stomach to digeſt 'em,
Old * GOTHOFREDUS with a Corpus
As fat and clumſy as a Porpus;
Him too with all his *Gallimatias*,
Scaliger's Jewell, ſage † CUJACIUS,
Though ſtill they keep their ancient ſtate,
Their grandeur, dignity and weight,
And claim reſpect like veteran beaux,
Or mountebanks in tarniſh'd clothes,
Since ‡ EDWARD from his ſubjects broke
The bondage of the Roman yoke,
Are but a vain and empty ſhade
Without the ſanction and the aid,

from Claudius to Honorius, during which time ſome of the moſt eminent Roman Lawyers, as Ulpian, Paulus, and Papinian preſided in the Courts of Juſtice of this country.

* GOTHOFREDUS—Dionyſius Gothofredus, an eminent Civilian, born at Paris in the year 1549, practiſed at Geneva in the year 1606, publiſhed in one large volume the whole body of the Civil Law or *Corpus Juris Civilis.*

† CUJACIUS—*Ille Margarita Civilium*, &c. Vid. Scaligeriana: the moſt eminent Civilian and moſt extraordinary Genius of his time; he was born at Thouloufe in 1520, and taught and practiſed the Civil Law at Bourges. His works were publiſhed at Paris in ten volumes, in the year 1659.

‡ EDWARD—Edward the Firſt put a period to the important ſtruggle between the Laws of England and Rome. Under his diſcipline the Laws of England obtained a complete and deciſive victory. *Black. Com.*

The

The forms, the process, and the mode
Coercive of the British Code.
How vain's the Civil Law's * *Citation*,
The † *Libel*, ‡ OATH, and ‖ *Fulmination*,
Which

* *Citation*—Is a summons to appear before an Ecclesiastical judge. It contains five material points: 1st. Name of the Judge and stile of the Court. 2. Defendant's name. 3. The day and place of appearance. 4. Plaintiff's name. 5. The cause. Citations are of various kinds, either general or special, inhibitory or intimatory, or *viis et modis*, or Prerogative Citations. For a more particular account, I refer the reader to the Proctors' Practice.

† *Libel*, or Libellus, in the Ecclesiastical Courts, answers to the Declaration in our Law, being a Charge drawn in writing on behalf of the Plaintiff, to which the Defendant is obliged to answer. A Libel according to Lanfranc, cap. quoniam de Petition, is defined the Lawyer's Argument.

Quis, quid, coram quo, quo jure petatur, et a quo
Rectè compositus quisque Libellus habet.
Fragm. Vet. J. Cti.

Which is thus englished by an eminent Proctor——

Each Plaintiff and Defendant's name,
And eke the Judge who tries the same,
The thing demanded, and the right whereby
You urge to have it granted instantly,
He doth a Libel right and well compose,
Who forms the same omitting none of those.

‡ *Oath*—In the Spiritual Court the answer of the Plaintiff is put in upon Oath, which practice was adopted in the time of the clerical Chancellors, and has continued ever since.

‖ *Fulmination*—Denunciation of Ecclesiastical Censures, or Excommunication, of which there are two kinds, the *major* and the *minor*;

Which Surrogate is wont to shed
By wholesale on the culprit's head!—
Did not the Shrieval arm exempt
His *Brutum fulmen* from contempt,
And lend a * Writ to back the curses
Which he so piously dispersés,
With ease Respondent might evade
The laws by Priests and Bigots made,
Their forms and fees of absolution,
And schemes of Christian persecution,
For while his Soul was doom'd to smart,
His body might in peace depart.
E'en He who erst his Judgments hurl'd
With vengeance o'er the Christian world,
Pull'd down the mighty from their seats,
Crush'd empires with his holy threats,

minor; the first is an exclusion from the Communion of Holy Church, and the company of the faithful; the second is an exclusion from the Sacrament, and Divine Worship: *Venatorius de sen. Excomm.* This latter is generally passed upon obstinate delinquents, refusing to appear upon Citation. The operative words were of old, *Auctoritate Dei Patris Omnipotentis, et Spiritûs sancti, et beatæ Dei genetricis Mariæ omniumque sanctorum excommunicamus et a limitibus sanctæ matris Ecclesiæ sequestramus, &c. Leg. Wic.*

* *A Writ*—The *Significavit*, or Writ *de Excommunicato capiendo* is here alluded to, which is a writ issuing out of Chancery, and so called either from the cause which gives birth to it, viz. the Bishop's certificate, or *significavit*, that the defendant has stood excommunicated for the space of forty days, the time allotted for his absolution and reconciliation, or from its effects, in empowering the Sheriff to take and imprison the Respondent in the county goal until he is reconciled to Holy Church.

Absolv'd

Absolv'd our souls, our sins forgave,
And promis'd every w—— and k——
Celestial beds. * * * * * * *
* * * * * * * *

[*Here the Manuscript is imperfect.*

* * * * * * * *
* * * * * * * *

Since then to Alfred's potent sway
JUSTINIAN's Genius must give way,
To Serjeant's coifs, Civilian's hoods,
JUSTINIAN's Institute to WOOD's,
What boots it that your Youth is spent
In dull * † Cimmerian cloyster pent?
Why brood ye o'er the toilsome page
Like Pupils of the Samian Sage
In ‡ Silence, till the cheerful Sun
Has twice seven years his circuit run,
Poring o'er PUFFENDORF and GROTIUS,
Ye learned sons of THEODOSIUS?
Say when your golden hours begin
What are your rents and comings-in?

* In dark Cimmerian desert ever dwell. MILTON.

† *Cimmerian*—The Cimmerii were a people in Italy, near the Lake Averno, who lived in caves under ground, inaccessible to the rays of the sun, where the Sibylls gave out their Oracles. See Hom. Odyss. xi. 14.

TIBULLUS, iv. 1. 6. 5.

‡ *Silence*—The year's silence imposed on the Doctors of the Civil Law, on their becoming advocates, as the condition upon which they are admitted to plead in the Ecclesiastical Courts.

Oh! say, for you can best inform us,
Good Doctor DRONE, and Doctor DORMOUS,
What mean those Periwigs enormous?
Can you upon your OATH declare
That all those costly loads of hair
Are the clear produce of your gains,
The clean net Harvest of your brains?
Are ye Proprietors of these,
Or merely Usufructu'ries?
I grant that Matrimonial Jars,
Rapine, Adultery, and Wars,
By others deem'd the worst of curses,
Have done you Justice, fill'd your purses,
And prov'd themselves no bad resources.
But in your starving times of Peace,
When naval condemnations cease,
And marriages are held in force
By that construction in Divorce
Which lately caus'd so much confusion
Touching the doctrine of Collusion,
That Husbands now by Wives cornuted
Are patiently to Bucks transmuted,
And ne'er apply to cunning men
To bring them to their Shapes again,
Your visages, I must conclude,
Will much increase in Longitude;
Peace which brings blessings to the Nation
Will make a Lent of long Vacation,

Your

Your Clients when they bring their Cases,
Will read Good Friday in your faces,
And ev'ry individual cheek
Remind them of an Ember week.
Thank Heav'n, in War as well as Peace
My person thrives, and fees increase;
Not e'en the wretches I undo
Will look so woebegone as You;
But though our separate walks we take,
Though our respective Planets make
Such difference 'twixt Ourselves and You,
Since two congenial Trades we woo,
Both in the Folly of Mankind
Such Comfort and Advantage find;
Both to the field of battle go,
Like Swiss to fight for Friend or Foe;
I much esteem such worthy neighbours,
And much your smiles will cheer my labours,
While to my Kinsman I impart
The secrets of the Pleading art,
Teach him the best and readiest way
To harass and secure his prey,
Shew him the practice of *Attaching*,
Distraining, hunting down and catching,
In *Trespass* how to spread his net,
In *Case*, in *Trover*, or in *Debt*.
And not to spread alone, but draw
Assignments, and demur in Law;

Then

Then when the Iſſue is enroll'd,
And at the Bar the Story told,
Give him with Eloquence and Grace
So well to varniſh o'er the Caſe,
That e'en the Judges curious eye
Shall ſcarce its rotten parts deſcry,
And though the facts as noon-day clear
Againſt his Client's cauſe appear,
Give him with fuſtian and bombaſt
So thick a fog o'er truth to caſt,
With words of ſuch due ſize and fitneſs
To badger and confound a witneſs,
That all who hear him ſhall confeſs
For language, manner, and addreſs,
He fairly equals in renown
Thoſe two choice Heroes of the Gown,
So fam'd for Ciceronian Eaſe
And Demoſthenic * ΔΕΙΝΟΤΗΣ,
Thoſe Neſtors of the Britiſh forum,
Th' illuſtrious BOTHER'UM and BORE'UM.
But ſince in theſe diſtreſsful days
When Hunger prompts Poetic Lays,
And Bards who feel no other fire
Than what th' Aonian nymphs inſpire,

* ΔΕΙΝΟΤΗΣ—A character of oratory, which at once unites acuteneſs, energy, and perſeverance. See Demoſt. Thucyd. Iſocrat. *paſſim.*

No

No cordial ſip ſave what diſtils,
From * AGANIPPE's purling rills,
Retiring from the Vales of Pindus
To garret vile with darken'd windows,
Are forc'd by lofty invocations
To ſwell their meager publications,
And while they reſt in time of need
To bait the Pegaſean Steed,
Implore ſome Deity's kind favour
To give their taſteleſs rhymes a flavour,
I, who by Law and Juſtice claim
As fair pretenſions to the ſame,
Shall beg ſome Godhead to attend
And help me to my Journey's end,
And lengthen out by frequent pauſes
My Lectures, as I've done my Cauſes.
And firſt bright CYNTHIUS I'll *ſubpœn'*
From hallow'd fount of HIPPOCRENE,
And *ſummons* from th' Aonian Grove
The Daughters of Olympian Jove;
But if thoſe ſweet harmonious Maids
Diſdain to quit their vocal ſhades,
Nor Cynthius will his Fount forſake—
To gloomy DIS my prayer I'll make,
And ſeek the Acherontic Lake,

* ——————— Cum deſertis Aganippes
Vallibus eſuriens migraret in atria Clio.
Juv. Sat. 7. lin. 6.

Down

Down to the Hall of Erebus I'll go,
And * *move* some Dæmon in the *Courts below*.

* Flectere si nequeo Superos Acheronta movebo.
VIRG.

LECTURE IV.

LECTURE IV.

Of the COMMON LAW *Process—Invocation to an Infernal Spirit—Of the* ORIGINAL, *or Original Writ—And Process thereon—The High Sheriff—His Executive Power—Of Law Fictions.*

COME then thou Goddess of Contention,
Genius of Craft, and Circumvention,
You, who in Parchment Robes array'd,
And tape-tied vest of vellum made,
With ink-stain'd lips, and eye-balls blear'd,
And thumbs with wax and rosin smear'd,
The baleful bitter draughts prepare
Of Poverty, Revenge, and Care,
And every tender tie remove
Of Amity and social Love;
Where'er you wield the Law's machine,
Whether at Lincoln's Inn you're seen,
Or those fam'd walls where Serjeant's sleep,
And plodding Clerks their vigils keep,
Or at the Temple, as thy trust is,
Open the sacred mint of Justice,
Whate'er the learned haunt you love,
Where'er thy busy footsteps move,

Say,

Say, if ſome dire occaſion leads
Two ſimple weights to logger-heads,
Such as of late bred doleful dudgeon
'Twixt JOHN-A-GULL, and JOHN-A-GUDGEON,
(Thoſe ill-ſtarr'd Chiefs whoſe wrath to ſing
'Vent'rous I 'wake the trembling ſtring.)
What inſtrument of dread import
Muſt bring the parties into Court,
From Juries to obtain relief,
And juſtice from a Counſel's brief?—
The * WRIT—from Chancery it came,
And Pleaders muſt adore the name,
The Writ that works the public Good
Oft ſaves th' expence of Chriſtian Blood:
Oft, when two Champions burn with rage
And pant in combat to engage,
Both fix'd their valour to proclaim,
Both reſolutely bent to aim
(Whether with paper charg'd or lead)
A Piſtol at each other's head,
Calmly ſteps in, bids Reaſon 'wake,
And Wrath her raſh reſolves forſake,
The inſtruments of Death reſtrains
And ſpares a trembling Hero's brains,
Yet loth to diſappoint the Devil,
Involves them in a ſorer evil,

* Τις' Ταρ' ὀρῶς θεῶν ἔριδι ξυνέηκε μάχεσθαι;
Δεῦρο νυν Διὸς υἱός. HOMER.

The

The worst of evils 'tis confess'd
(But guard this secret in thy breast,)
With LAW entangles and turmoils,
And holds them in a Pleader's Toils—
The WRIT * ORIGINAL—the root
And master spring of ev'ry suit,
Which erst in mouldy † hamper slept
By Lawyers *Hanaper* yclept,
Was held much learning to display
When learning in her Cradle lay;
Then first its influence began
To charm like Eastern Talisman,
In form grotesque, and antique guise,
Which Justice did of old devise,
With Parchment wing and ‡ Signet pendant
Flew forth to summons the Defendant,

* ORIGINAL—This writ is so called Κατ' Εξοχὴν, being the writ which gives the Courts of Common Law Jurisdiction, and that upon which all subsequent Process is founded.

† *Hamper* or *Hanaper*—In Latin *Hanaperium*. The *Hanaper office* belongs to the Common Law Court in Chancery. Original Writs, in all matters of a civil nature between subject and subject, were kept according to the simplicity of ancient times, in a hamper, as those in which the interests of the Crown were concerned were preserved in a *small bag*, *(in parvâ bagâ)* which is the foundation of what is now called the Petty Bag office.

Black. Com. Vol. 3. c. 4.

‡ *Signet Pendant*—" The Original Writs issued out of Chancery, " because when the Courts were but one, the Chancellor held " the Seal, therefore, when they were divided, he, still keeping " the Seal, sealed all Original Writs. By this means the Seal was " a Check upon the other Courts, to know what Cause was there."

GILBERT *Com. Pleas*, p. 2.

Stuttering

Stuttering abbreviations myſtic
In ſign and token cabaliſtic
Latin ſurcharg'd with Norman French,
Returnable to * *Common Bench*,
A mixture, which like that of Babel,
The Shrieve to conſtrue was not able,
And though by Law no human creature
† *Ad impoſſible tenetur*,
Defendant at the Shrieve's command
Muſt at his peril underſtand;
But He perhaps who lack'd the wit
To ſcan the learning of the Writ,
Was much too wiſe at once to cloſe
And grapple with his injured Foes,
Might rather wiſh to be excus'd
From taking pains to be abus'd,
Content his perſon to ‡ *eloign*,
Or ſtay at home and caſt § *Eſſoign*:

* *Returnable*, &c.—The Original being made returnable in Common Pleas, gives the Court Juriſdiction to hold Plea of the matter therein ſpecified, as it does in the King's Bench when made returnable to that Court.

† *Ad impoſſibile—The Law obliges no man to perform impoſſibilities.*

‡ *Eloign—Eloigner*, Fr.—To remove, or ſend away.

§ *Eſſoign* or *Eſſoigne*, Fr, *Eſſonium*, Latin,—ſignifies an excuſe for him who is ſummoned to appear to the *Original Writ*. The original writ is made returnable within fifteen days, the Eſſoign day is the firſt of three days next immediately preceding that on which the Court ſits for the diſpatch of Buſineſs, and on which the Defendant is obliged to appear to the Writ.

But

But though the Law in modern days
Three * barbarous Tongues no more displays,
Like Plato's triple headed monster,
And Pleaders can their Pleadings construe,
Though Sheriffs now the Writ's intent
Are taught by Act of Parliament,
And all mankind so wise are reckon'd,
E'er since the fourth of George the Second,
That none against the Laws in use
From Ignorance can plead Excuse,
Still lest the Suit should be delay'd,
And Justice at her Fountain stay'd,
A † *Capias* is conceiv'd and born
Ere yet th' ORIGINAL is drawn,

To

* *Three barbarous*, &c.—Till the reign of Edward the Third, all Proceedings at Law were in the old Norman French, but by a Statute of that King's reign, (36. c. 15.) it was enacted that all Pleas should be pleaded, &c. in the English tongue, but be entered and enrolled in Latin. The Latin which succeeded the French, and which was in truth a composition of French, English, and Latin, continued in use for 400 years, without interruption, till the Usurpation of Cromwell, when the language of the Record was altered into English, but at the Restoration, the Latin language was again used, and continued till the year 1730. when it was finally altered and settled by 4 Geo. 2d. c. 26.

† *Capias*—A Writ so called from the most operative word in it, is of two sorts, the one a *Capias ad Respondendum*, before judgment, being a Process to compel the Defendant to answer, as it occurs in this place, and the other a *Capias ad Satisfaciendum*, which is a Writ of Execution. The Practice here alluded to, is that which is now in use, and was introduced on the discontinuance of real Pledges, for ease and expedition, whereby the Original is become in effect a mere useless and unnecessary process,

but

To justify the Court's proceedings,
Its Forms, its Processes, and Pleadings,
And thus, by ways and means unknown
To all but Heroes of the Gown,
A Victory full oft is won
Ere Battle fairly is begun;
Tis true, the wisdom of our Laws
Has made the Effect precede the Cause,
But let this Solecism pass—
* *In fictione æquitas*—

but nevertheless considered as indispensable in warranting the *Capias*, and giving the Court Jurisdiction, and is therefore supposed to be actually subsisting before the *Capias* is sued out, although it is notorious that after the Roll is made up, the Cursitor makes out the ORIGINAL to warrant the *Capias*, and delivers it to the Filazer to be filed with the *Custos Brevium*.

* *In fictione Juris consistit æquitas*—*Legal fictions are grounded on Principles of Equity.*

LECTURE V.

LECTURE V.

Process continued—Of the Writs LATITAT—CAPIAS—QUO MINUS—*Of filing* Common *Bail*—*Of* Special *Bail, or* Bail to the Action.

LIGHT lie the sculptur'd Marble o'er his Breast,
Blaz'd be his Virtues, and his Sins suppress'd,
And wheresoe'er his bones are laid
Thrice honour'd be that Lawyer's Shade,
Who Truth with Nonsense first combin'd,
And EQUITY with Fiction join'd,
And had the goodness to assign us
* LATITAT, † CAPIAS, and ‡ QUO MINUS!

Melodious

* LATITAT—A Writ so termed because it suggests, as the ground of the power therein given to the Sheriff, A FICTION in Law, viz. that the Defendant is not to be found in the County of Middlesex to be taken by Bill of Middlesex, as it is called, but lurks and lies hid, or, as it is expressed, *runs up and down secreting himself*, within the Bailiwick of the Sheriff, to whom the writ is directed. F. N. B. 78. It is in *practice* the first process in order to compel an appearance in the King's Bench, in the like manner as the *Capias* is in the Common Pleas: the *Capias* proceeds as was before shewn upon a Fiction, that the Original had been previously sued out, and the *Latitat* issues in the King's Bench upon the like *Fiction*, that the Bill, which is called the Bill of Middlesex in that Court, has actually issued to the Sheriff of that County, and been returned as ineffectual.

† *Capias*—Vid. ante, p. 29, in notes.

‡ *Quo Minus*—Is the first Process in the Exchequer, as the *Latitat* is in the King's Bench; it issues upon a surmise that the

Melodious Sounds! at once they cheer
My Spirits, and regale mine ear,
What Bard howe'er in Fiction vers'd,
By rhyme *subpœna'd*, and coerc'd,
Due homage to their worth shall pay
And all their various powers display?
If haply *John-a-Stile* provoke
The legal fight 'gainst *John-a-Noke*,
The LATITAT the foe besieges
And baffles him in *Banco Regis*.
Skill'd with * *Ac-Etiams* to perplex
And foil with† *Bills of Middlesex*,

Quo

Plaintiff is the King's Debtor, which serves to give the Court a Jurisdiction. It is called *Quo Minus* because the Plaintiff, being for this reason supposed to be the King's Debtor, it is suggested as of course, that he is the less able to pay the Debt by reason of the Injury complained of in the Action.

* *Ac-Etiam*—An *Ac-Etiam* is a Clause inserted in the *Latitat*, by virtue of the 13th Car. 2. c. 2. which enacts, that no writ of Trespass should hold defendant to bail, &c. any further than an Appearance, unless the true Cause of Action was expressed in the Writ. And therefore in a *Latitat* it runs thus, after the words to answer A. B. in a Plea, &c. AND ALSO to a Bill of the said A. against the said B. to be exhibited according to the Custom of our Court before us for £ ——— upon promises, or debt, as the Case may be.

† *Bill of Middlesex*—A *Bill of Middlesex* is a Precept directed or presumed to be directed to the Sheriff of that County in which the Court of King's Bench sits, for if it sat in any other County, it would be termed a Bill of that County; it is called a Bill, and signed *Per Billam*, to distinguish it from the *Original*. It formerly issued to warrant the *Testatum*, or as it is now called the *Latitat*, of which above; but modern practice has consolidated the two writs in Effect, by reciting in the *Latitat* that the *Bill of Middlesex* has already issued, which is generally *false*.

QUO MINUS guides the wordy war
And * *mates* him at th' Exchequer Bar,
While CAPIAS is rejoic'd to seize
And plunder him at† *Common Pleas*:
Nor will it boot th' indignant *Noke*,
Or God or Goddess to invoke,
Nor God nor Goddess shall convey
His person from th' impending fray,
Doom'd in the Action to *appear*,
a E'en though the ambient Cloud he wear,
Which Lærtiades of yore,
Or Citherea's Offspring wore.
For lo! a grisly Shrieval Band
That round the seat of Justice stand,

* Give

a ——— ——— Ἀῶτος Ἀθήνη
Πολλὴν ἠέρα χεῦε φίλα φρονέουσ' Ὀδυσῆι. HOM.

At Venus obscuro gradientes ære sepsit
Et multo nebulæ circum Dea fudit amiatu.
VIRG. Æn.

* *Mates him*—The Exchequer took its name *a Tabulâ ad quam assidebant.*—Camden Brit. p. 113. The Table is covered with cloth resembling a Chess board, whereon when certain of the King's accounts are made up, the sums are marked and scored with Counters. *Blac. Com.* vol. 3. p. 44.

† *Common Pleas*—*Communia Placita*, the Court of Common Pleas holds connusance of all Pleas which are not of the Crown, and which being between subject and subject, are properly denominated *Common Pleas*. Some have supposed that the word *Pleas* is short for the word *Pleasures*, and that the term *Common Pleas*, as applied to the practice of the Court, means the *Pleasures of the Community*.

* Give dreadful *Note* of Preparation
And *summons* him to litigation,
Force him the doubtful war to wage,
To file his † Sureties and engage,
Or if the *Summons* he resists,
‡ *Enter his name* upon the Lists,
Where each blest *Fiction* is enroll'd
The legal conflict to uphold,
All for the wisest ends constructed,
That Suits may better be conducted,
That every Lawyer in his Station
May reap the fruits of his Vocation,
That Pleas, and Pleaders may prevail,
And Justice equal hold her golden Scale.
But yet alas! not all conspire
Such legal wisdom to admire.
There are of Writs who disapprove,
§ Dread Bail *below* and Bail *above*,

Whom

* *Note of Preparation*—The *English Notice* is here alluded to, which is used in all cases where the Defendant is not to be held to Bail.

† *Sureties*—Viz. Common Bail, *Messrs. John Doe* and *Richard Roe*.

‡ *Enter his name*—In case the Defendant fails to file *Common bail* or *enter his Appearance*, the Statute 12 Geo. First, empowers the Plaintiff to *enter an Appearance for him*, and to leave a Declaration in the proper Office, and upon giving him Notice to plead thereto, to proceed to Judgment.

§ *Bail below and bail above*—The word *Bail* is derived from the French *bailler*, to *deliver*, because the Defendant when arrested, is delivered

Whom worse than Goblins damn'd, the sight
Of Sheriff's myrmidons affright,
The silver Tag, and vermil Stamp
Chill to the soul with horror damp:
These scent the Process from afar,
And fly the Din of Parchment War.
But let the Plaintiff, ere he sue
* In *debt* or *case* for money due,
Swear to the sum, the writ indorse,
And let the Shrieve said writ enforce,
Be quick to execute, but slow
To take the proffer'd bail *below*,
Lest

delivered over to his Sureties, who bind themselves for his forthcoming at a day and place certain. Bail *below* is the Bail to the Sheriff, taken by him, upon the Execution of the Writ of Arrest. This species of Bail is called *Special*, as contradistinguished from *Common* Bail, beforementioned, the Sureties being real and substantial bondsmen, and not fictitious, as in the case of *Common* Bail. Bail *above* is the Bail in Court, upon the Defendant's appearance at the return of the Writ, or four days after. It is likewise termed *Bail to the Action*, and is effected by what is called *Justifying Bail*, or the Oath of the Sureties upon examination as to their competency and responsibility.

* *In debt*, &c.—By Debt, or action of Debt, is meant an Action for a determinate specific sum, and is usually brought upon Specialties, i. e. Debts arising upon Deeds and Instruments under seal; the ordinary remedy for indeterminate sums is by *Action on the Case*, as it is called, i. e. upon the particular circumstances of the case this remedy is granted at Common Law, and by virtue of the Statute of Westminster, the second, 13 Ed. I. &c.

By 12 Geo. I. the Plaintiff is obliged to make affidavit of his Debt, and that the sum due is £10. or upwards, before he is entitled to hold Defendant to Bail, and if he is desirous of taking a Security above £40. he is by the Statute of 13 Car. II. c. 2. obliged not only to swear to the Sum, but have it inserted in the body of the Writ, or Process. The Practice is to mark the Sum sworn to by

Lest with the Plaintiff's Suit embroil'd,
The * Shrieve at his own weapons foil'd,
The bond assign'd, the Debtor fled,
Himself Defendant in his stead,
Be doom'd with curses to bewail
The horrors of insolvent Bail,
His folly to his Cost expose,
And bear the weight of others' woes;
Till by the Plaintiff vex'd, and sped,
Fresh Suits impending o'er his head,
He feels in dreams, or seems to feel
† His own Bum-bailiff at his heel,
Flies his own writs, and strives to shun
Th' ideal form of frightful Dun,
Which e'en in Sleep his arm assails,
Nor aught his Shrieval wand avails
To conjure down the restless Sprite,
Or speed him in his fancied flight.

ly the Plaintiff on the back of the Writ, e. g. *Bail by Affidavit assiled for* £10. and the Sheriff is then required to arrest the Defendant; where the Debt is under £10. the Defendant can only be served with a Copy of the Writ or Process, with an English Notice subjoined.

* *The Shrieve, &c.*—If the Sheriff accept bail, which afterwards prove insolvent, and does not cause sufficient bail to be put in *above*, he will be himself responsible to the Plaintiff.

The Sheriff is liable to an action for taking insufficient Bail, as well as to Amercement. *Raymond* 493. *Salk.* 99. *Sid.* 96. 2 *Saund.* 58, 59.

† *Bum-Bailiff*, is a corruption of the word bound-bailiff, or special bailiff, as contradistinguished from the Bailiff of a Hundred.

LECTURE VI.

LECTURE VI.

Of Process against privileged Persons—Of the DISTRINGAS—*Its physical and chirurgical Qualities—Process to* OUTLAWRY, *and the Party's Appearance upon the* CAPIAS ULTAGATUM.

LIVES there a Senator unplac'd,
Already ruin'd and disgrac'd,
A Legislator who retires
Before his *Privilege* expires,
Sans House, *sans* Land, *sans* Goods and Chattels,
Or party friend to fight his battles?
No writ or footsteps can detain,
No process can his Skin distrain,
And though a sudden DISSOLUTION,
Might fit him for an Execution,
'Twere best a prudent course to take,
And spare him for his Country's sake,
For could a Member's skin when dried
Make Parchment like * John Zisca's hide,

Would

* *John Zisca*—This anecdote of John Zisca is recorded in Mr. Burke's celebrated letter to the Duke of Bedford, which leaves

Would it not ſavour of extortion
Should ev'ry Lawyer take his portion?
Great heroes howſoe'er inclin'd
To haraſs and deſtroy mankind,
Ne'er fleſh the ſteel, or roll the thunder,
Without ſome hopes of fame and plunder,
And LAWYERS who no leſs delight in
The Trade of quarrelling and fighting,
Should be as kind and tender hearted
To thoſe who with their Caſh have parted,
Ne'er from the paths of Honor ſwerve,
But hold compaſſion in reſerve,
And where they ſee no hopes of booty
Abate the rigour of their duty.
'Tis true, there are, in whom you'll find
Birth, ſplendor, pride, and meanneſs join'd,
Who Writs by *Privilege* elude,
Yet labour for the public Good,
Againſt a Nation's debts inveigh,
Yet ſcorn a Tradeſman's bill to pay,
Who pains and penalties create
For grand Defaulters in the State,
Yet fain would 'ſcape the Sheriff's ſearch
And leave a Plaintiff in the lurch;

leaves little room to doubt but that this very eminent and ingenious writer muſt have obtained a ſight of Mr. Surrebutter's Profeſſional Lectures in the original M. S.

But

But first * *attach him*, and attend
With *Capias ad Respondend'*,
Let loose the Dogs of War and furies,
† TESTATUM, ALIAS, and PLURIES;
But if at length *non est invent'*,
At him again with ‡ *Exigent*,
Proclaim him by the Act's direction
(Act 31st Eliz. 3d Section.)

* *Attach him*—The Student will observe the order of the Process to Outlawry regularly pursued; but it would swell these Notes to an inconvenient length, were the Editor to dwell longer in detail upon the subject than may be absolutely necessary to illustrate the Text. The *Original* or *Præcipe* has been already mentioned, which is followed by the *Attachment*, or writ of *Pone*; the *Distringas* and *Capias ad satisfaciendum*, concerning which we have already treated.

† *Testatum*, or *testatum Capias*, is a second Writ of *Capias*, directed to the Sheriff of another County upon the return of the first *Capias*, and is so called from the principal word that occurs in it; it recites the former writ, and states that it is *testified* or *(testatum est)* that the Defendant *lurks* or *wanders in the bailiwick* of the Sheriff to whom the Writ is directed, and upon the Sheriff's return of *non est inventus*, there issues successively the *alias* Writ and the *pluries* Writ, which are so called because after the words, "we command you," *(præcipimus)* the words *sicut alias*, or *sicut pluries*, "as we have formerly," or, "as we have often commanded you," occur in these Writs, as the reason of their being issued.

‡ *Exigent*—If the Sheriff returns *non est invent'* upon all the writs, a Writ of *Exigent* may be sued out, which requires the Sheriff to cause the Defendant to be proclaimed, required, or exacted, in five County Courts successively, and if after being so exacted, he does not appear, he is outlawed.

Then ſmite him as a *Coup de Grace*
With § *Utlagatum Capias.*
Exacted, outlaw'd, and embruted,
His head to head of ‖ Wolf tranſmuted,
Compell'd by writ of *Exigenter*
The Liſts againſt his will to enter,
See where the Captive Wretch in Court
Meet ſubject both for gain and ſport,
By Writ, as by the Cup of Circè,
Transform'd, and at the Plaintiff's mercy,
Stands like a Roman Gladiator,
To do a deed againſt his nature;
While we who compaſs'd his undoing
Claim the ſole merit of his ruin;
For this we never ſought your aid,
Ye Doctors of the Civil Trade,
Nor ever thank'd you for a Curſe
To help us to Defendant's purſe,

§ *Utlagatum Capias* is the Writ authorizing the arreſt of the Defendant, and his Commitment to Priſon till the Outlawry is reverſed.

‖ *Wolf.*—Alluding to the ancient Common Law Doctrine of Outlawry, the puniſhment whereof was Death, and therefore an Outlaw was ſaid to bear *caput Lupinum*, becauſe any man might kill him as he might kill a wolf. *Utlagata et vaviata, capita gerunt Lupina quæ ab omnibus impunè poterunt amputari, merito ruin ſine lege perire debent qui ſecundum legem vivere recuſant.* Proceſs to Outlawry lies in all actions *vi et armis*; by Stat. 13 Ed. I. it lies in account; by 25 Ed. III. c. 17. it lies in Debt, Detinue and Replevin; and by 19 Hen. VII. it lies in Caſe and in Treſpaſs; it is now conſidered, and uſed only as a proceſs to compel an Appearance, and may be reverſed upon the Defendant or his Attorney appearing in Court, and indemnifying the Plaintiff in full Coſts.

Or

Or ſtrip him of a ſingle Chattel,
Ye learned votaries of VATTEL.
Now Doctors, reperuſe this Caſe,
And ſtudy the Defendant's face,
Read in his looks the operation
Of legal charm and conjuration,
A woeful viſage worn with Cares!
Such as an exil'd Patriot wears—
But could you gain a ſight of mine,
You'd take me for a ſleek Divine,
Whoſe ſmooth Cherubic features ſhew
The fruits which from good living flow;
'Tis true the nature of my face
Bears fewer ſigns of inward Grace,
Though ſomething on the whole you'll find
Which indicates no vulgar mind,
A certain graceful tinge of copper,
That's quite profeſſional and proper:
But by what charm or magic ſpell
I look ſo plump, and thrive ſo well,
So gay, ſo blithe in my demeanour,
While you ſo ſplenetic and lean are,
If I am *cited* to *confeſs*,
The Muſe ſhall venture to digreſs,
In ſportive Rhyme of artleſs mould
Her "plain unvarniſh'd tale unfold",
And cheerfully obey your *Summons*,
Good Gentlemen of DOCTORS COMMONS.

LECTURE VII.

An Episode containing authentic Memoirs of Mr. SURREBUTTER'S *Professional Career.*

WHOE'ER has drawn a Special Plea,
Has heard of old TOM TEWKESBURY,
Deaf as a post, and thick as mustard,
He aim'd at Wit, and bawl'd and bluster'd,
And died a *Nisi prius* Leader—
That Genius was my SPECIAL PLEADER—
That great man's office I attended
By HAWK and BUZZARD recommended,
Attorneys both of wondrous skill,
To pluck the Goose, and drive the Quill;
Three years I sat his smoky room in,
Pens, paper, ink, and pounce consuming,
The fourth, when *Essoign Day* begun,
Joyful I hail'd th' auspicious Sun,
Bade TEWKESBURY and Clerk adieu,
(* Purification, Eighty-two)

* *Purification*—The morrow of the Purification of the Blessed Virgin Mary is one of the return days of Hilary Term.

Of

Of both I wash'd my hands; and though
With nothing for my cash to shew,
But Precedents so scrawl'd and blurr'd,
I scarce could read one single word,
Nor in my books of Common Place
One feature of the Law could trace,
Save BUZZARD's nose and visage thin,
And HAWK's deficiency of Chin,
Which I while lolling at my ease
Was wont to draw instead of Pleas;
My chambers I equipt complete,
Made Friends, hired Books, and gave to eat
If haply to regale my friends on,
My Mother sent a haunch of Ven'son.
I most respectfully entreated
The choicest Company to eat it,
To wit, old BUZZARD, HAWK, and CROW,
Item, TOM THORNBACK, SHARK, and Co.
Attorneys all as keen and staunch
As e'er devour'd a Client's haunch;
Nor did I not their Clerks invite
To taste said ven'son hash'd at night,
For well I knew that hopeful Fry
My rising merit would descry,
The same litigious course pursue,
And when to fish of prey they grew,

* By love of food and contest led,
Would haunt the spot where once they fed;
Thus having with due circumspection
Form'd my professional connexion,
My desk with Precedents I strew'd,
Turn'd critic, danc'd, or penn'd an ode,
Studied the *Ton*, became a free
And easy man of Gallantry:
But if while capering at my Glass,
Or toying with some fav'rite Lass,
I heard th' aforesaid HAWK a-coming,
Or BUZZARD on the staircase humming,
At once the fair angelic maid
Into my coal-hole I convey'd,
At once, with serious look profound
Mine eyes commencing with the ground,
I seem'd like one estrang'd to sleep,
"And fix'd in cogitation deep,"
Sat motionless, and in my hand I
Held my † *Doctrina Placitandi*,
And though I never read a page in't,
Thanks to that shrewd well-judging Agent,

* Egit amor Dapis atque Pugnæ. HOR.

† *Doctrina Placitandi*, "or the art and science of Special Pleading, a book so entitled, shewing where and in what Cases, and by what Persons, Pleas, as well real as personal, and mixed, may be properly pleaded."

My

My Sister's husband, Mr. SHARK,
Soon got six Pupils and a Clerk,
Five Pupils were my stint, the other
I took to compliment his Mother;
All round me came with ready money,
Like Hybla bees surcharg'd with honey,
Which, as they press'd it so genteely,
And begg'd me to accept so freely,
Seem'd all so fond of SPECIAL PLEADING,
And all so certain of succeeding,
I. who am always all compliance,
As well to Pupils as to Clients,
Took as genteelly as they paid it,
And freely to my purse convey'd it;
That I might practically shew,
And they in *special* manner know
Ere they began their Pleas to draw,
What an * ASSUMPSIT meant in Law—
To wit for divers weighty sums
Of *lawful cash* at Pleader's Rooms,
By me said Pleader, as was prudent,
† *Had and received* to use of Student;

* *Assumpsit*—A form of Action so called. When one man becomes legally indebted to another, the Law implies a Promise of Payment, for which, what is called *indebitatus assumpsit* lies.

† The action for *money had and received*, lies only for money which, *ex æquo et bono*, Defendant ought to refund. Com. dig. Tit. Action on the Case—in assumpsit, a. 1.

For money paid by mistake or on a consideration which happens to fail. *Ib.*

In

In short, I acted as became me,
And where's the Pleader that can blame me?
Not one of all the trade that I know,
E'er fails to take the Readyrino,
Which haply if his purse receive,
No human art can e'er retrieve.
Sooner when Gallia's credit's flown
To some *Utopian* world unknown,
a ASTRÆA shall on earth remain
The last of the celestial train,
To tender *Assignats* at *Par*
Triumphant in the *Champ de Mar*,
And when their deep-laid projects fail,
And *Guillotines* no more avail,
Her baffled Statesmen shall excise
Some new found region in the skies,
And tow'ring in an air balloon
Pluck *Requisitions* from the Moon;
Sooner the daring wights who go
Down to the watery world below,
Shall force old Neptune to disgorge
And vomit up the ROYAL GEORGE,
Than He who hath his bargain made
And legally his cash convey'd,
Shall e'er his pocket reimburse
By diving in a Lawyer's Purse.

a Ultima cælicolum Terras ASTRÆA reliquit. VIRG.

LECTURE. VIII.

LECTURE VIII.

Memoirs continued—Mr. SURREBUTTER *is called to the Bar—Goes the Circuit—The Character of* Mr. JOSEPH FERRET, *a Country Attorney—Subject resumed—Instructions in the Art of* SPECIAL PLEADING—*Messrs.* JOHN DOE *and* RICHARD ROE—*Conclusion of the first Book.*

THUS in my saddle I was seated,
Ere scarce one *Lustrum* was compleated,
But when my Mental Powers I weigh'd,
My figure and my mien survey'd,
A bold Causidical appearance,
Strong nerves, strong parts, and perseverance,
Far nobler views inspir'd my mind,
It seem'd that Nature had combin'd
An eye to threaten and command,
And brows no mortal could withstand,
With lungs of *Æolus* and *Stentor*,
For some great purpose, peradventure,
There is, I cried, (and dropt my Pen,)
A Tide in the affairs of men,
Which leads to fame and fortune those
Who take it while the current flows,

There

There is, ye Gods, there is a Crisis,
I'll seize it whatsoe'er the price is:
PROZER was dead, and Serjeant QUIRKIT
Grew husky, and had left the Circuit,
And as for SHARK's friend SHOVELNOSE,
We long had deem'd him meat for crows;
I scorn'd in this dull scene to tarry,
Essay'd at once a loftier Quarry,
At once indulg'd my fav'rite biass
And Stamp'd my fame at *Nisi Prius*:
So now I take my brace of nags,
My Note-book, Clerk, and Saddle-bags,
And saunt'ring gently on my Journey,
Look out for some good rich Attorney,
One that's a Judge of parts and merit,
Such as that choice discerning spirit,
My worthy little friend JOE FERRET,
That honest, free, good natur'd soul,
Who stands so high upon the Roll,
And fills with such *eclat* and grace,
That pretty comfortable place,
He gain'd by Government Connexions,
And prudent conduct at Elections,
By making Ministerial bounty
Pass for his own throughout the County:
A friend to all who are oppress'd,
And seek by Law to be redress'd,

One

One that abhors all Compositions,
All mean * *Retraxits*, and *Submissions*,
Scorns † *Arbitrations* as a stain
To *ninth* and *tenth* of WILLIAM's Reign,
Acts, which he deems mislead his Clients,
Cramp Genius, and degrade the Science;
But when the sparks of discord rise,
Should parties wish to compromise,
My little friend provokes the flame,
Encourages and spreads the same,
And with such Zeal and judgment blows
The coals of strife 'twixt friends and foes,
He ne'er can fail at 'sizes or session,
Of growing *warm* by his Profession;
His Garden's neat, the Messuage good,
The best in all the neighbourhood,

* *Retraxits*—A *Retraxit* is a withdrawing of the Suit by the Plaintiff, and is so termed from the most effective word in the old Latin Entry.—A *Retraxit* differs from a *Nonsuit* in this respect, a *Retraxit* must be by the Plaintiff's Appearance, and personally withdrawing his Suit—a *Nonsuit* is effected by the Plaintiff's non-appearance upon being called. In the first, the Plaintiff voluntarily *retracts* his pretensions to sustain the Suit, which operates as a perpetual Bar to any subsequent Action for the like Cause—a *Nonsuit* is only an abandonment of the Suit *Pro hac Vice*.

† *Arbitrations*—By the 9 and 10 W. 3d. c. 15, it is enacted, That Merchants, Traders, and all persons desiring to end their controversies by Arbitration, may agree that their *submission* of their Suit to the Award or Umpirage of any person or persons should be made a rule of any of his Majesty's Courts of Record; and in case of disobedience to such Award or Umpirage, the parties neglecting or refusing to perform the same, shall be subject to all the Penalties of contemning a Rule of Court.

With

With door Chinese the front is grac'd,
His windows are of Gothic taste,
The which, to me, though all the Village
Conceive they're got by fraud and pillage,
And both th' Exciseman and the Rector
Despise his taste in Architecture,
To me, whose taste is less refin'd,
And more to social joys inclin'd,
If chance my penetrating eye
His glitt'ring neat buffet descry,
A goodly symptom! and behold
His well scour'd knocker shine like Gold.
Look all so pretty and inviting,
I make no scruple of alighting;
At said Attorney's fix my quarters,
Flatter and flirt with all his Daughters,
With KITTY FERRET dance Cotillions—
While you, ye worthy rum Civilians,
Ye sober, persevering Stagers,
Hammer your * *minors* and your *majors*,

* *Minors*—The *Major* Excommunication separates those on whom it is inflicted, not only from the Mystical Body of the Church, and from Spiritual Communion, but also from the society of the faithful: the *Minor*, or lesser Excommunication separates only from the passive Communion or receiving of the Sacrament.—These may be inflicted by sentence of the Ecclesiastical Judge—Vid. *Lindwood de Senten. Excom.* C. Ult. Gloss. *Wesembery* and *Lafranc*—Authorities greatly relied on in matters of spiritual Cognizance, and the practice of the Ecclesiastical Courts.

And

And lapt in ſmoke, and vapours dank,
Pore over LINDWOOD and LANFANRC.—
But ſoft awhile, methinks dear JOB,
Our Brethren of the Scarlet Robe,
Lull'd by the muſic of my numbers,
Seem to reſume their wonted Slumbers:
Good MERCURY, with caution tread,
And MORPHEUS wave thy Wand of Lead;
While they enjoy their meditations,
We 'ſcape their Excommunications,
Meanwhile do thou the * *Tale declare*,
Meet weapons of offence prepare,
Open your budget of Reſources,
Muſter your powers, collect your forces,
The Truth, and all the Truth, diſcover,
And add ſuch flouriſhes moreover,
Such aggravations, and additions,
Embelliſhments, and repetitions,
As faithful Fancy oft begets
On ſome young SPECIAL PLEADER'S wits.
Which ſerve like notes of Commentators,
Or ſpeeches of confus'd Debaters,
To puzzle e'en by Explanation,
And darken by Elucidation,

* *Tale*—The Tale or Narration contains the Story of the Plaintiff's Caſe, and is more commonly called the *Declaration*.

For puzz'ling oft becomes your duty,
And makes Obscurity a beauty;
And trust me 'tis of wond'rous use
By Nonsense to improve Abuse,
As I, thank Heaven, so oft have done,
And worthily my Race have run.

Then let me pray for writ of * PONE,
JOHN DOE and RICHARD ROE his Crony.
Good men, and true, who never fail
The needy and distress'd to bail,
Direct unseen the dire dispute,
And pledge their names in ev'ry suit—
Sure 'tis not all a vain delusion,
Romance, and fable † Rosicrusian,
That spirits do exist *without*,
Haunt us, and watch our *whereabout*;
Witness ye visionary pair,
Ye floating forms that light as air,
Dwell in some SPECIAL PLEADER's brain;
Am I deceived? or are ye twain
The restless and perturbed Sprites
The manes of departed Knights,
Erst of the Post? whose frauds and lies
False Pleas, false Oaths, and *Alibis*.

* PONE—The PONE is the Writ of *Attachment* before mentioned, it is so called from the words of the Writ, *Pone per vadium & salvos plegios*, "*Put by Gage and safe Pledges*, A. B. John Doe and Richard Roe.

† *Rosicrusian*—For an account of the Theory of the Rosicrusian System, see Pope's Rape of the Lock.

Rais'd

Rais'd ye in Life above your Peers,
And launch'd ye tow'rds the ſtarry Spheres,
Then to thoſe manſions "unanneal'd,"
Where unrepented ſins are ſeal'd:
Say, wherefore in your days of fleſh
Cut off, while yet your ſins were freſh,
Ye viſit thus the realms of Day,
Shaking with fear our frames of Clay,
Still doom'd in penal Ink to linger,
And hover round a Pleader's finger,
Or on a Writ impal'd, and wedg'd,
For Plaintiff's Proſecution pledg'd,
Aid and abett the purpos'd ill,
And works of Enmity fulfil,
Still doom'd to hitch in Declaration,
And drive your ancient Occupation?
While thus to you I raiſe my Voice,
Methinks I ſee the Ghoſts rejoice
Of Lawyers erſt in Fiction bold,
LEVINZ, and LUTWYCHE, Pleaders old;
With Writs and Entries round him ſpread,
See plodding SAUNDERS rears his head,
Lo! VENTRIS wakes! before mine eyes
BROWN, LILLY, and BOHUN ariſe,
Each in his Parchment ſhroud appears,
Some with their Quills behind their ears,
Flouriſh their velvet Caps on high,
Some wave their grizzel wigs, and cry

Hail happy Pair! the Glory and the Boast,
The Strength and Bulwark of the legal Host,
Like * SAUL and JONATHAN in Friendship tried,
Pleasant you lived and undivided died!
While Pillories shall yawn, where erst ye stood,
And brav'd the torrent of o'erwhelming mud,
While gaming Peers, and † Dames of noble Race,
Shall strive to merit that exalted Place;
While righteous Scriv'ners, who when Sunday shines,
Pore o'er their Bills, and turn their noughts to nines,
(Their unpaid Bills, which long have learn'd to grow
Faster than Poplars on the banks of Po,)
Freely shall lend their charitable aid
To young Professors of the gambling trade;
While Writs shall last, and Usury shall thrive,
‡ Your name, your honour, and your praise shall live:

* *Saul*—"Saul and Jonathan were pleasant in their Lives, and in their Death they were not divided." 2d *Samuel*, c. 1. v. 23.

† *Dames*—Mr. SURREBUTTER in this passage seems to have contemplated the probability of certain Characters of both Sexes in the fashionable World, exhibiting their Persons in the Pillory for keeping public Gaming Tables. It is written in the true Spirit of Prophecy, and from a late Declaration of a learned and noble Judge, (no less distinguished for his impartial and independent Spirit, than for his zeal and earnestness for Justice) the EDITOR very sincerely hopes Mr. SURREBUTTER's Prophecy will be shortly fulfilled.

‡ Semper honos, nomenque tuum, laudesque manebunt.
VIRG.

Jailers

Jailers ſhall ſmile, and with Bumbailiffs raiſe
Their iron voices to record your praiſe,
Whom Law united, nor the Grave can ſever,
"All hail JOHN DOE, and RICHARD ROE for ever."

END OF THE FIRST BOOK.

Extract from the British Critic,

For Sept. 1796, p. 300.

A Pleader may, perhaps, find a safer Guide than the Poet who here offers his Service, but he cannot easily find one more facetious and agreeable. There is really abundance of humour throughout this little Poem, expressed in very chastised Language; and we hope the Author will find Encouragement sufficient to produce the promised continuation. If our enquiries have been successful, this Guide is an immediate descendant of a Guide whose Instructions respecting a famous City in the West have gained universal Admiration: and we may almost say of the present Bard, what would be the highest strain of Commendation, "sequitur patrem non passibus æquis."

From the Monthly Review,

For Oct. 1796, p. 227.

SOME "Wag of the Law" has here played the False Brother, and has made a piece of very good diversion out of the technical Language and Proceedings of a Law-suit, and the Profession of a Special Pleader. With less wit than the inimitable Butler, but with a more cultivated Strain of humourous Verse, and with much appropriate Knowledge of Men and Things, he has opened a vein of pleasantry, which will probably make his professional Brethren laugh in their sleeves, while other Readers laugh aloud.—We question not that the lovers of humour and good-natured railing will join us in wishing for the Sequel, which is to appear on condition of a favourable reception of the first Part. Many of the Notes are really instructive; at least they have proved so to us, who are little conversant with the modes of attack and defence in legal Warfare.

Extract from the British Critic,

For Sept. 1794, p. 300.

A Reader may, perhaps, find a fairer Guide than the Poet who here offers his Services, but he cannot easily find one more facetious and agreeable. There is really a humour or humour throughout this little Poem, expressed in very classical Language: and we hope the Author will find Encouragement sufficient to produce the promised continuation. If our enquiries have been successful, this Guide is an immediate descendant of a Guide whose instructions relighting a London Copy in the West have gained universal Admiration: and we may almost say of the present Bard, what would be the highest strain of Commendation, "legitimi patrem non pudet agnosci."

From the Monthly Review,

For Oct. 1794, p. 247.

SOME "Wag of the law" has here played the Fable Writer, and has made a piece of very good diversion out of the ceremonial language and Proceedings of a Law-Suit, and the Proceedings of a Special Pleader. With less wit than the inimitable Butler, but with a more cultivated Strain of humorous Verse, and with much appropriate Knowledge of Men and Things, he has opened a vein of pleasantry, which will probably make his production Readers laugh in their sleeves, while other Readers laugh aloud.—We applaud him not that the tones of humour and good-natured raillery and jocularity are in unison for the Sequel, which is to appear, on condition of a favourable reception of the first Part. Many of the Notes are really informing, not least they have preserved in us, who are little conversant with the modes of attack and defence in legal Warfare.